REMARKS/ARGUMENTS

1. Claims 6-20 and 22-31 are pending. Claims 6, 11, 22, and 25-27 are independent. Claims 11, 19, and 22 have been amended herein.

2. The Examiner rejected claims 6-20 and 22-31 under 35 U.S.C. § 103(a) as being unpatentable over Esteves et al. (U.S. Patent No. 6,205,129 B1 and hereinafter "Esteves") in view of Chheda et al. (U.S. Patent No. 7,542,769 B1 and hereinafter "Chheda"). Reconsideration of this application is respectfully requested in view of the amendments and/or remarks provided herein.

Rejections under 35 U.S.C. § 103(a)

3. Claims 6-20 and 22-31 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Esteves in view of Chheda. Applicants respectfully disagree with the Examiner's analysis of the cited references and conclusion of obviousness. However, before addressing each claim rejection, Applicants will discuss the general teachings of the cited references individually and in combination.

Esteves discloses a wireless communication system in which a data rate associated with transmission of information from a base station to a mobile station is controlled. (*See* col. 2, lines 18-21.) According to Esteves, the base station transmits data to the mobile station over a forward link either at a variable rate or a fixed rate. (*See* col. 2, lines 21-28.) So long as transmission quality is acceptable, forward link transmission preferably occurs at the variable rate in order to maximize throughput on the forward link. (*See* col. 2, lines 28-31.) The base station monitors reverse link control messages to determine the reverse link signal strength and notifies the mobile station when the reverse link signal is weak. (*See* col. 2, lines 32-36.) Upon receiving such notice, the mobile station attempts to find another base station that can receive stronger reverse link transmissions and thereby operate in the variable rate forward link transmission mode. (*See* col. 2, lines 36-41.) If such other base station cannot be located, the mobile station receives forward link transmissions in the fixed rate mode. (*See* col. 2, lines 44-45.)

Therefore, to summarize, Esteves discloses a method implemented by a base station for controlling forward link transmissions based on reverse link signal quality. However, Esteves does not provide any disclosure regarding the controlling or gating of reverse link transmissions. Additionally, Esteves does not provide any disclosure regarding the determination of received broadcast signal quality or a comparison of such quality to a threshold at the mobile station. Further, Esteves does not provide any disclosure relating to operation of the mobile station to determine a gating rate or to inform the base station that it intends to start gating.

Chheda discloses a method for dynamically controlling one-eighth rate gating of the reverse link in a wireless system. According to Chheda, a base station controller (BSC) analyzes forward link channel capacity of a base station (BTS) and activates reverse link gating if the available capacity is low. In particular, the BSC determines whether the forward link loading of a particular BTS exceeds a threshold. (*See* col. 8, lines 16-22.) If so, the BSC resets (turns off) the reverse link gating for one or more mobile stations in the BTS' coverage area by sending the mobile stations an over-the-air message (e.g., a Universal Handoff Direction Message). (*See* col. 8, lines 32-35, 55-57; col. 9, lines 35-37, 60-63, 66-67; col. 10, lines 1-2.) On the other hand, if the forward link loading of the BTS does not exceed the threshold, the BSC sets (turns on) the reverse link gating for one or more mobile stations in the BTS' coverage area by sending the mobile stations an over-the-air message. (*See* col. 8, lines 29-32, 55-57.)

Therefore, to summarize, Chheda discloses a method for controlling reverse link gating based on forward link loading. However, Chheda does not provide any disclosure relating to the mobile device determining a gating rate at all, let alone based on the quality of a received broadcast signal. Instead, the mobile station of Chheda is instructed by the BSC as to whether to activate gating based on the BSC's own determination of forward link loading. According to Chheda, the mobile station never determines forward link loading. Further, Chheda does not provide any disclosure regarding the determination of received broadcast signal quality or a comparison of such quality to a threshold at the mobile station. Rather, the mobile station of Chheda simply responds to instructions from the base station or BSC and is not actively involved in the gating determination or decision. Still further, according to Chheda, when the base station loading exceeds the loading threshold (i.e., when the parameter the Examiner equates to the claimed "quality" exceeds the alleged quality threshold), the BSC instructs the mobile station to **stop** reverse link gating, (*see* col. 8, lines 32-35).

The combination of Esteves and Chheda provides a system in which the network infrastructure (base station and BSC) controls the forward link data rate based on reverse link signal quality and controls reverse link gating based on forward link loading. However, the combination of Esteves and Chheda completely fails to provide for control of reverse link gating based on transmission quality of a forward link broadcast. Further, the combination of Esteves and Chheda fails to provide any suggestion that the mobile station participates in the decision to start or stop reverse link gating.

Applicant will now address the Examiner's specific claim rejections. First, with respect to independent claim 6, Applicants disagree with the Examiner's conclusion of obviousness because the combination of Esteves and Chheda fails to disclose a determination of the reverse link gating rate by a mobile user device and further fails to disclose the effectuation of reverse link gating by the specific signaling recited in the claim. In particular, the combination of references fails to disclose or suggest, among other things, that the mobile device (a) communicates an intent to gate at a determined gating rate to a network control element, (b) receives an acknowledgment from the network control element authorizing reverse link gating at the determined gating rate, and (c) responsive to the acknowledgment, transmits reverse link communications at the determined gating rate. As detailed above, Esteves is focused on forward link rate variation, not reverse link rate variation. Chheda, on the other hand, discloses reverse link gating, but the decision to start or stop reverse link gating according to Chheda is made independently of the mobile device (i.e., by the BSC). The mobile device of Chheda is simply instructed to start or stop reverse link gating, as applicable. (*See, e.g.*, Chheda, col. 8, lines 12-40.) As a result, the combination of Esteves and Chheda does not disclose or suggest all the functionality recited in Applicants' claim 6. Therefore, the Examiner has failed to establish a *prima facie* case of obviousness with respect to claim 6. *See* M.P.E.P. § 2143.

On page 3 of the Office Action, the Examiner asserts that Chheda discloses the mobile device's determination of a gating rate based on the quality of a received broadcast signal at column 9, line 63 through column 10, line 3. The Examiner also asserts that Chheda discloses the mobile device's communication of an intent to gate at the determined gating rate to a network control element at column 3, lines 34-41. Further, the Examiner asserts that Chheda discloses the mobile device's receipt of an acknowledgement authorizing reverse link gating at column 3, lines 41-49. Applicants strongly disagree.

At column 9, line 63 through column 10, line 3, Chheda discloses how a mobile device may be instructed to stop gating during handoff when a sector (i.e., the infrastructure, not the mobile) determines that gating should be off. As expressly stated at column 10, line 2 of Chheda, "the terminal is instructed to use gating off" (emphasis added). There is no determination by the mobile device of a gating rate "based on the quality of a received broadcast signal" as expressly required by claim 6. Additionally, at column 3, lines 34-41, Chheda summarily discloses that reverse link gating (reverse link fundamental transmission gating feature) is switched on when the forward link loading threshold is not exceeded and such switching occurs at the initialization of a call for a given mobile station. However, this section of Chheda does not describe the details envisioned by Chheda for carrying out the summarized steps. To understand how Chheda proposes effectuating the switching of reverse link gating on and off, the remainder of Chheda must be read and, as detailed above, column 8 of Chheda clearly describes that the BSC determines the forward link loading and instructs the mobile station when to turn reverse link gating on or off. Therefore, when column 3, lines 34-41 are read in the context of Chheda's entire disclosure, one skilled in the art would readily determine that Chheda does not disclose any communication of an intent to gate from the mobile device to the infrastructure.

At column 3, lines 41-49, Chheda summarily discloses the maintaining of an initial reverse link gating state regardless of subsequent dynamic changes to forward link channel capacity. However, again, this section of Chheda does not describe the details envisioned by Chheda for carrying out the summarized maintenance procedure. To understand how Chheda proposes effectuating the control of reverse link gating, the remainder of Chheda must be read and, as detailed above, columns 8 and 10 of Chheda clearly describe that the BSC determines the forward link loading and instructs the mobile station when to turn reverse link gating on or off. Therefore, when column 3, lines 41-49 are read in the context of Chheda's entire disclosure, one skilled in the art would readily determine that Chheda does not disclose receipt of an acknowledgment by the mobile device from the infrastructure authorizing reverse link gating at a gating rate determined by the mobile device, as is recited in Applicants' claim.

Therefore, for the foregoing reasons, Applicants submit that independent claim 6 is not obvious in view of the combination of Esteves and Chheda, and respectfully request that claim 6 be passed to allowance.

As the Examiner acknowledged on page 3 of the Office Action, claim 27 has similar limitations to claim 6, except that it is drawn to a wireless mobile user device instead of a method of operating such a device. Additionally, claim 27 requires that the primary operations related to reverse link gating be performed by a controller of the mobile device. As detailed above, the combination of Esteves and Chheda fails to disclose or suggest all the functionality of the mobile device recited in the claim. Therefore, Applicants submit that the Examiner has failed to establish a *prima facie* case of the obviousness of independent claim 27 in view of the combination of Esteves and Chheda, and respectfully request that claim 27 be passed to allowance.

Regarding independent claim 11, Applicants disagree with the Examiner's conclusion of obviousness because the combination of Esteves and Chheda fails to disclose, among other things, determination, by a network control element, whether a parameter relating to broadcast (forward link) transmission quality crosses a threshold, as recited in the claim. Instead, as detailed above, Esteves uses reverse link transmission quality to control forward link transmission rate and Chheda monitors forward link loading as a parameter relating to forward link channel capacity. On page 3 of the Office Action, the Examiner directs Applicants' attention to column 11, lines 5-8 of Esteves to allegedly disclose determination, by a network control element, whether a parameter relating to broadcast transmission quality crosses a threshold. Applicants respectfully disagree with the Examiner's characterization of Esteves.

The cited section of Esteves is part of claim 3 of the patent. As a result, the understanding of the claim must come from the remainder of Esteves' disclosure. The cited section of claim 3 of Esteves states that data is transmitted from a second base station to a mobile station if a first signal quality measurement does not exceed a second signal quality measurement by more than a threshold. The cited section of Esteves does not disclose whether the second base station determines or even compares the two signal qualities or any parameter related to them.

However, claim 2 of Esteves, from which claim 3 depends, states that an unbalanced state message is sent from a first base station to the mobile station, (*see* col. 10, lines 53-56), and subsection (1) of claim 3 of Esteves provides that a second base station is selected and "a first signal quality measurement" associated with transmissions from the first base station is compared to "a second signal quality measurement" associated with transmissions from the second base station ***in response to the unbalanced state message***, (see col. 10, line 64 through col. 11, line 4). In other words, by reading claim 2, subsection (1) of claim 3, and the cited section of claim 3 of Esteves in context, one of ordinary skill in the art would readily understand that the selection of the second base station and the comparison of the signal quality measurements are performed by the mobile station, not a base station or other network control element. How the second base station determines to transmit the data in response to the comparison made by the mobile device is not expressly explained in the claim 3, but it appears to be related to the second base station's ability to receive control information from the mobile station. Therefore, Esteves appears to disclose determination, by a network control element, whether control information has been received from a mobile station, wherein the mobile station has determined parameters relating to broadcast transmission quality from two base stations, ***not*** a determination by the network control element whether a parameter relating to broadcast transmission quality has crossed a threshold, as is required by the claim. Therefore, neither the cited section of Esteves nor any other section of Esteves or Chheda discloses the step of determining, by a network control element, whether a parameter relating to broadcast transmission quality has crossed a threshold. As a result, the Examiner has failed to establish a *prima facie* case of the obviousness of independent claim 11 in view of the combination of Esteves and Chheda.

Nevertheless, in an effort to move prosecution forward, but not for any reason related to patentability, Applicants have herein amended independent claim 11, without prejudice or disclaimer, to clarify that the network control element determines whether a parameter relating to broadcast transmission quality exceeds a threshold and, responsive to determining that the parameter exceeds the threshold, transmits a message to one or more mobile stations instructing the mobile station(s) to start gating reverse link transmissions at a specified gating rate. The combination of Esteves and Chheda fails to disclose or suggest such a determination and conditioned transmission by a network control element in the context of controlling reverse link transmissions. Support for Applicants' amendments to claim 11 can be found at least in Paragraphs [0027] and [0028] of Applicants' published application. Therefore, Applicants submit that claim 11, as amended, is not obvious in view of the combination of Esteves and Chheda, and respectfully request that claim 11 be passed to allowance.

With respect to independent claim 22, such claim has similar limitations to claim 11, except that it is drawn to a network element instead of a method of operating such a device. Additionally, claim 22 requires that the primary operations related to controlling reverse link gating be performed by a controller of the network element. As detailed above with respect to claim 11, the combination of Esteves and Chheda fails to disclose or suggest all the functionality of the network element recited in the claim. For example, as discussed above with respect to claim 11, the combination of Esteves and Chheda fails to disclose or suggest the network element's determination as to whether a parameter relating to broadcast transmission quality has crossed a threshold. Therefore, Applicants submit that the Examiner has failed to establish a *prima facie* case of the obviousness of independent claim 22 in view of the combination of Esteves and Chheda.

Nevertheless, in an effort to move prosecution forward, but not for any reason related to patentability, Applicants have herein amended independent claim 22, without prejudice or disclaimer, to clarify that the controller of the network element is operable to determine whether a parameter relating to broadcast transmission quality exceeds a threshold and, when the parameter exceeds the threshold, generate a message instructing a plurality of mobile stations to start gating reverse link transmissions at a gating rate. The combination of Esteves and Chheda fails to disclose or suggest such a network element controller and its operational capabilities in the context of controlling reverse link transmissions. Support for Applicants' amendments to claim 11 can be found at least in Paragraphs [0027] and [0028] of Applicants' published application. Therefore, Applicants submit that claim 22, as amended, is not obvious in view of the combination of Esteves and Chheda, and respectfully request that claim 22 be passed to allowance.

Regarding independent claims 25 and 26, Applicants disagree with the Examiner's conclusion of obviousness because the combination of Esteves and Chheda fails to disclose all the limitations of the claims. On pages 5 and 6 of the Office Action, the Examiner asserts that Esteves discloses, at column 2, lines 31-36, determining at least one of (a) a quantity of mobile user devices in a coverage area of a base station and (b) a variance in broadcast signal transmission power of the base station, to produce a monitored parameter. However, there is no such disclosure in Esteves. At the cited section of Esteves, the reference simply states that the base station monitors control information sent from the mobile station on the reverse link and uses the control information to inform the mobile station when the reverse link is weak and in an unbalanced state relative to the forward link. With respect to a possible monitored parameter, Esteves expressly provides that the mobile station measures forward link signal qualities from two base stations and compares the signal qualities to each other to determine whether their difference exceeds a threshold. (*See, e.g.,* col. 10, line 62 through col. 11, line 9.) Thus, the control information sent from the mobile station to the base station is based on the mobile station's evaluation of the forward link signal quality from the base station. However, the only signal qualities specifically discussed in Esteves are long-term average forward link signal-to-noise ratios, which are determined based on pilot signals received from the base stations. (*See, e.g.*, col. 2, lines 63-65; col. 5, lines 39-48.) Esteves completely fails to disclose or suggest that the network infrastructure or the mobile station determines at least one of (a) a quantity of mobile user devices in a coverage area of a base station and (b) a variance in broadcast signal transmission power of the base station, to produce a monitored parameter. Even if, assuming *arguendo*, the system of Esteves may inherently determine the quantity of mobile devices in the coverage area of a particular base station, there is absolutely nothing in Esteves that remotely suggests that the determined quantity is compared to a threshold in the context of controlling reverse link gating. Additionally, while base station transmit power may affect the signal-to-noise ratio measured by a mobile device, those of ordinary skill in the art readily recognize that base station transmit power variance is a parameter that is measured by a network element (see, e.g., claim 26) and is, therefore, completely distinct from the forward link signal-to-noise ratio measured by a mobile device, as disclosed in Esteves.

On page 5 of the Office Action, the Examiner again directs Applicants' attention to claim 3 of Esteves to justify the Examiner's assertion that Esteves discloses the determination as to whether the monitored parameter exceeds a threshold. However, as discussed above, the analysis performed by the mobile station in claim 3 of Esteves is a comparison of the difference between two signal-to-noise ratios relative to a threshold, (*see* col. 2, lines 63-65; col. 5, lines 39-48), not a determination of whether mobile device quantity or base station broadcast transmission power variance exceeds a respective threshold, as provided in Applicants' claims. Therefore, Esteves fails to disclose or suggest, among other things, both determining steps recited in claim 25 and the two "determine" functions of the network element in claim 26.

Applicants acknowledge that Chheda describes determining forward link loading in a sector of a base station, which could be related to the quantity of mobile devices located in the sector of the base station. (*See* Chheda, col. 3, lines 21-27.) However, according to Chheda, when the forward link loading exceeds a threshold, the mobile device is instructed to stop reverse link gating (turn off reverse link transmission gating feature), not start it as is required by Applicants' claims 25 and 26. (*See* Chheda, col. 3, lines 34-38.) Therefore, to the extent Chheda could be construed to disclose the control of reverse link gating based on mobile device quantity, Chheda appears to disclose the exact opposite of Applicants' claims.

In view of the foregoing, the combination of Esteves and Chheda fails to disclose or suggest all the limitations recited in Applicants' independent claims 25 and 26. Therefore, the Examiner has failed to establish a *prima facie* case of obviousness of claims 25 and 26 in view of Esteves and Chheda. Accordingly, Applicants respectfully request that the Examiner withdraw the rejections of claims 25 and 26 under 35 U.S.C. § 103(a), and pass claims 25 and 26 to allowance.

Regarding claims 7-10, such claims are dependent upon claim 6, which claim has been shown allowable above. Additionally, claims 7-10 are independently patentable because the combination of Esteves and Chheda fails to disclose or suggest all of the limitations of such claims. For example, with respect to claim 10, the combination of Esteves and Chheda fails to disclose, among other things, transmission ***to*** the network element of an intent to change the gating rate to a new gating rate and receipt ***from*** the network element of a new rate acknowledgment. On page 7 of the Office Action, the Examiner asserts that such functionality is disclosed by Esteves at column 2, lines 54-62 and column 11, lines 10-22, respectively. Applicants respectfully submit that the Examiner's analysis and application of Esteves is in error.

At column 2, lines 54-64, Esteves discloses transmission of variable rate control information from the mobile station to a first base station and searching by the mobile station for a second base station when the first base station is unable to receive the control information from the mobile station, in order for the mobile station to attempt to remain in a variable data rate mode for receiving data on the forward link. This section of Esteves does not disclose or suggest that the mobile station transmits any intent to change gating rate to the network. In fact, this section of Esteves appears to teach just the opposite--namely, that the mobile station unilaterally attempts to keep the forward link data rate the same by searching for another base station that can support the current, variable data rate.

At column 11, lines 10-12, Esteves discloses receipt by the second base station of the variable data rate control information. However, as detailed in column 5, lines 1-11 of Esteves, the variable data rate control information includes a quantized value representative of the maximum forward link data rate the mobile station believes can by supported by the base station based on the mobile station's determination of signal-to-noise ratios for pilot signals received from the base station. Thus, according to the cited section of Esteves, the network element (second base station) is receiving an estimated forward link rate from the mobile station; whereas, in contrast, the claim limitation requires the mobile station to receive a new rate acknowledgment from the network element.

Therefore, since claims 7-10 introduce additional subject matter that, when considered in the context of the recitations of claim 6, constitutes patentable subject matter, Applicants submit that the recitations of claims 7-10 are not obvious in view of the combination of Esteves and Chheda, and respectfully request that claims 7-10 be passed to allowance.

Regarding claims 12-18 and 20, such claims are dependent upon claim 11, which claim has been shown allowable above. Additionally, claims 12-18 and 20 are independently patentable because the combination of Esteves and Chheda fails to disclose or suggest all of the limitations of such claims. For example, with respect to claim 12, neither reference discloses a parameter relating to broadcast transmission quality as being transmit power variability of a broadcast signal. Instead, as discussed above with regard to claims 25 and 26, Esteves discloses the forward link quality parameter as being a long-term average forward link signal-to-noise ratio, which is determined based on pilot signals received from a base station, (*see, e.g.*, Esteves, col. 5, lines 39-48), and Chheda discloses the forward link parameter as being forward link loading or capacity, (*see, e.g.*, Chheda, col. 3, lines 21-27).

Further, with respect to claim 13, neither reference discloses a parameter relating to broadcast transmission quality as being a quantity of mobile user devices. Instead, as discussed above with regard to claims 25 and 26, Esteves discloses the forward link quality parameter as being a long-term average forward link signal-to-noise ratio, which is determined based on pilot signals received from a base station, (*see, e.g.*, Esteves, col. 5, lines 39-48), and Chheda discloses the forward link parameter as being forward link loading or capacity, (*see, e.g.*, Chheda, col. 3, lines 21-27). Moreover, even if, assuming *arguendo*, forward link loading as disclosed in Chheda can be considered analogous to quantity of mobile user devices a recited in Applicants' claim, the combination of Esteves and Chheda would require the infrastructure to instruct the mobile station to stop reverse link gating if the loading exceeded a set threshold. (*See* Chheda, col. 3, lines 34-38.) By contrast, claim 13 requires that the network element (infrastructure) instruct the mobile station to start reverse link gating by virtue of the claim's dependence upon claim 11. Therefore, to the extent Chheda could be construed to disclose the control of reverse link gating based on mobile device quantity, Chheda appears to disclose the exact opposite of Applicants' claim.

Still further, with respect to claim 18, neither reference discloses reverse link gating mobile devices located near an edge of a cell less than mobile devices located near a base station. The Examiner asserts, on pages 8-9 of the Office Action, that Esteves discloses such selective reverse link gating at column 2, lines 63-67 and column 3, lines 1-6. However, there is no such disclosure of the recited claim limitations at those locations of, or anywhere else in, Esteves. First, Esteves is directed to forward link gating, not reverse link gating. Second, column 2, lines 63-67 and column 3, lines 1-6 simply describe how the mobile station selects a second base station to proceed with maintaining the current variable data rate on the forward link. At the cited sections of Esteves, the reference states that the second base station must have a long-term average forward link signal-to-noise ratio that is not significantly less than the long-term average forward link signal-to-noise ratio of the first base station (i.e., the base station that can no longer support the current variable data rate on the forward link due to the forward and reverse links being unbalanced). If the second base station meets the signal-to-noise ratio criteria, then the second base station transmits to the mobile station in the variable rate mode and transmissions from the first base station terminate. There is no discussion whatsoever at these sections of Esteves regarding distinguishing mobile stations at the edge of a cell from those near a base station.

Therefore, since claims 12-18 and 20 introduce additional subject matter that, when considered in the context of the recitations of claim 11, constitutes patentable subject matter, Applicants submit that the recitations of claims 12-18 and 20 are not obvious in view of the combination of Esteves and Chheda, and respectfully request that claims 12-18 and 20 be passed to allowance.

Regarding claim 19, Applicants have re-written the claim in independent form to incorporate the recitations of claim 11, from which claim 19 previously depended. Claim 19 is independently patentable because the combination of Esteves and Chheda fails to disclose or suggest all of the limitations of such claim. On page 9 of the Office Action, the Examiner asserts that Esteves discloses the limitations of previously presented claim 19 at column 6, lines 35-46. Again, the Examiner's analysis of Esteves and application thereof to Applicants' claim is in error.

At the cited section of Esteves, the reference discloses the mobile station's analysis of the long-term average forward link signal-to-noise ratios of the base stations. However, Esteves completely fails to provide ***any*** discussion related to the network control element's (e.g., base station's or some other infrastructure element's) analyzing of power up requests from the mobile station and determining of whether a quantity of power up requests is less than a threshold. Additionally, the Examiner has failed to identify any reference providing a linkage between mobile station power up requests, as recited in the claim, and long-term average forward link signal-to-noise ratios of base stations, as disclosed in Esteves. Therefore, because neither Esteves nor Chheda provides any discussion regarding the use of a number or quantity of mobile device power up requests as the basis for determining whether to instruct a mobile device to start reverse link gating, Applicants submit that the combination of Esteves and Chheda fails to disclose all of the limitations of Applicants' claim as is required for the Examiner to establish a *prima facie* case of obviousness. Accordingly, Applicants respectfully request that the Examiner withdraw the rejection of claim 19 under 35 U.S.C. § 103(a) and pass claim 19 to allowance.

Regarding claims 23-24, such claims are dependent upon claim 22, which claim has been shown allowable above. Additionally, claims 23-24 are independently patentable because the combination of Esteves and Chheda fails to disclose or suggest all of the limitations of such claims. For example, with respect to claim 23, neither reference discloses a parameter relating to broadcast transmission quality as being transmit power variability of a broadcast signal. Instead, as discussed above with regard to claims 25 and 26, Esteves discloses the forward link quality parameter as being a long-term average forward link signal-to-noise ratio, which is determined based on pilot signals received from a base station, (*see, e.g.*, Esteves, col. 5, lines 39-48), and Chheda discloses the forward link parameter as being forward link loading or capacity, (*see, e.g.*, Chheda, col. 3, lines 21-27).

Further, with respect to claim 24, neither reference discloses a parameter relating to broadcast transmission quality as being a quantity of mobile user devices. Instead, as discussed above with regard to claims 25 and 26, Esteves discloses the forward link quality parameter as being a long-term average forward link signal-to-noise ratio, which is determined based on pilot signals received from a base station, (*see, e.g.*, Esteves, col. 5, lines 39-48), and Chheda discloses the forward link parameter as being forward link loading or capacity, (*see, e.g.*, Chheda, col. 3, lines 21-27). Moreover, even if, assuming *arguendo*, forward link loading as disclosed in Chheda can be considered analogous to a quantity of mobile user devices, the combination of Esteves and Chheda would require the infrastructure to instruct the mobile station to stop reverse link gating if the loading exceeded a set threshold. (*See* Chheda, col. 3, lines 34-38.) By contrast, claim 24 requires that the network element (infrastructure) instruct the mobile station to start reverse link gating by virtue of the claim's dependence upon claim 22. Therefore, to the extent Chheda could be construed to disclose the control of reverse link gating based on mobile device quantity, Chheda appears to disclose the exact opposite of Applicants' claim.

Therefore, since claims 23-24 introduce additional subject matter that, when considered in the context of the recitations of claim 22, constitutes patentable subject matter, Applicants submit that the recitations of claims 23-24 are not obvious in view of the combination of Esteves and Chheda, and respectfully request that claims 23-24 be passed to allowance.

Regarding claims 28-31, such claims are dependent upon claim 27, which claim has been shown allowable above. Additionally, claims 28-31 are independently patentable because the combination of Esteves and Chheda fails to disclose or suggest all of the limitations of such claims. For example, with respect to claim 30, the combination of Esteves and Chheda fails to disclose, among other things, transmission ***to*** the network element of an intent to change the gating rate to a new gating rate and receipt ***from*** the network element of a new rate acknowledgment. On page 7 of the Office Action, the Examiner asserts that such functionality is disclosed by Esteves at column 2, lines 54-62 and column 11, lines 10-22, respectively. However, as discussed above with respect to claim 10, Applicants respectfully submit that the Examiner's analysis and application of Esteves is in error. Therefore, since claims 28-31 introduce additional subject matter that, when considered in the context of the recitations of claim 27, constitutes patentable subject matter, Applicants submit that the recitations of claims 28-31 are not obvious in view of the combination of Esteves and Chheda, and respectfully request that claims 28-31 be passed to allowance.

4. The Examiner is invited to contact the undersigned by telephone, facsimile or email if the Examiner believes that such a communication would advance the prosecution of the instant application. Please charge any necessary fees associated herewith, including extension of time fees and additional claims fees, to the undersigned's Deposit Account No. 50-2117.

Respectfully submitted,

By: /Randall S. Vaas/ Jan 22, 2010
Randall S. Vaas
Attorney for Applicants
Reg. No.: 34,479
Motorola, Inc.
600 North U.S. Highway 45
Room AN-475
Libertyville, Illinois 60048
Email: Randy.Vaas @motorola.com